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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/560,275 | 12/08/2005 | Hajime Kando | 36856.1392 | 3343 |

54066 7590 06/02/2008
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| EXAMINER |
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SAN MARTIN, JAYDI A

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| ART UNIT | PAPER NUMBER |
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2834

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| NOTIFICATION DATE | DELIVERY MODE |
|-------------------|---------------|

06/02/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

JKEATING@KBIPLAW.COM
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|------------------------------|--|--------------------------------------|--|
| Office Action Summary | Application No. 10/560,275 | Applicant(s) KANDO, HAJIME | |
| | Examiner /Jaydi A. San Martin/ | Art Unit 2834 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-58 is/are pending in the application.
- 4a) Of the above claim(s) 55-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-39, 46-48 and 50-54 is/are rejected.
- 7) ☒ Claim(s) 40-45, 49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/05, 2/06, 3/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Claims 30-55 (Group I) in the reply filed on 1/23/08 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 30-39, 46-48, 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogawa (WO98/52279).

Ogawa discloses a boundary acoustic wave device comprising: a first medium layer (28); a second medium layer (29, 30) stacked on the first medium layer; an electrode (14) disposed in an interface between the first medium layer and the second medium layer, wherein boundary acoustic waves propagate along the interface between the first and second medium layers.

Ogawa discloses a sound absorbing layer (27). However, the sound absorbing layer is not disposed on the external surface the second medium layer (29 or 30).

However, it would have been obvious at the time of the invention was made to stack a sound absorbing layer on one of the external surfaces of the medium layers to attenuate spurious responses, as it is well known in the art.

Regarding claims 31-38 it should be noted that the claimed limitations do not define the structure of the boundary acoustic wave device. It is the Examiner's position that such limitations

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would be inherent characteristics of the material used to form the sound absorbing layer. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

4. Claims 40-45 and 49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The references of the Prior Art of Record fail to teach or suggest either alone or in obvious combination the limitations as set forth in claims 40-45 and 49, and specifically comprising the limitation of the conductive layers on the surfaces of the sound absorbing layer, the through hole configuration as claimed in claim 41 and the wiring structure as claimed in claims 44, 45 and 49.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Jaydi A. San Martin/ whose telephone number is 571-272-2018. The examiner can normally be reached on M-Th 9-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darren E. Schuberg can be reached on 571-272-2044. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jaydi A. San Martin/
Primary Examiner
Art Unit 2834

5/26/08